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COMMITTEE AGAINST TORTURE

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SUMMARY RECORD OF THE 490th MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 15 November 2001, at 10 a.m.

Chairman: Mr. BURNS

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Initial report of Benin

ORGANIZATIONAL AND OTHER MATTERS (continued)

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Benin (CAT/C/21/Add.3)

1. At the invitation of the Chairman, the delegation of Benin took places at the Committee table.

2. Mr. GNONLONFOUN (Benin) said that he had first-hand experience of what cruel, inhuman or degrading treatment was and he was pleased to be able to tell the Committee that torture was no longer a tool of government or a common feature of life in Benin. Briefly recalling Benin's colonial and Marxist-Leninist past, he said that the Active Forces of the Nation Conference a decade earlier had been a turning point in Benin's history. Since then, the Government had been doing its best to combat torture: impunity was no longer the rule, a new draft Criminal Code was before the National Assembly, and Benin had become a party to a number of regional and international human rights instruments. However, the practice of torture had not been completely eliminated in every part of the country. Legislation was in place but was proving difficult to implement effectively, and the national and departmental committees set up to raise awareness of human rights were suffering from the limited resources available to the Government, whose overwhelming priority had to be the alleviation of poverty. Nevertheless, a flourishing press acted as a true guardian of human rights, the Constitutional Court was constantly monitoring the question of police custody and the Supreme Court was combating all human rights violations.

3. There was no simple way to put an end to the practice of mob justice in Benin. Many Beninese believed that anyone who killed another person deserved to die, and citizens with little faith in the security services or justice system preferred to take the law collectively into their own hands. The situation was not helped by cutbacks in public services, including law enforcement services, that had been required under the country's structural adjustment programme. Although a number of people had been tried and convicted of participating in lynch mobs in recent years, outside help was needed to educate the public and restore confidence in the police.

4. Surveys had shown that public opinion was strongly opposed to the abolition of the death penalty in Benin; for that reason, it had been retained in the new draft Criminal Code. However, the Government had decreed a moratorium on the application of that penalty, which had allowed as many as 10 criminals sentenced to death to escape execution in the past decade.

5. Benin was a country in turmoil, confronted with the problems of unemployment and an increasingly hostile environment, dazzled by the allure of Westernization and trapped in a globalization process it found hard to adjust to. It was against that background that the country's problems had to be seen. Torture and cruel and degrading treatment should and must be punished, and he hoped that the Committee would be able to help his Government rid the country of those practices.

6. Mr. CAMARA, Country Rapporteur, said that an important part of the Committee's task was to help prevent torture, and his questions were intended to help Benin avoid a return to a situation in which torture was widespread and to ensure that the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was applied effectively in practice. The fact that Benin's report was in conformity with the Committee's guidelines, albeit eight years late, and the delegation's frankness suggested that the discussion between the Committee and the delegation would be a productive one.

7. His first question concerned the Constitutional Court and the manner in which cases were referred to it: he would welcome some indication of how many cases were submitted to the Court directly by aggrieved parties and how many were referred to it in the course of proceedings in ordinary courts. He also wished to know whether access to the Constitutional Court was free of charge and whether or not legal representation was obligatory. He asked the delegation to provide statistics on the number of cases relating to torture that were referred to that Court, or to other courts for that matter, and what the consequences had been of any decisions by the courts in such cases.

8. He had two questions on paragraph 20 of the report: did the amnesty law passed in 1990 also protect people who had committed acts of torture or other serious human rights violations during the revolutionary period, between 1972 and 1990? And what was the outcome - including any subsequent action - of the inter-ministerial commission's census of victims of torture and ill-treatment?

9. With regard to article 1 of the Convention, he noted that there was no legal definition of the crime of torture in Benin and consequently no specific penalties for it. As the Convention could only be fully implemented if the definition of torture in article 1 was incorporated into domestic legislation, he wished to know if the Government had envisaged including such a definition in the draft Criminal Code. He would also like to hear the delegation's comments on the apparent contradiction between article 2, paragraphs 2 and 3, of the Convention and the information contained in paragraph 52 of the report. Whereas the Convention ruled out any justification for torture, he was concerned that anyone guilty of an offence or crime could not be prosecuted "if the homicide, injuries or beatings were ordered in accordance with the law or by a legitimate authority".

10. The Committee would appreciate some clarification of paragraph 45 of the report, which dealt with extradition in relation to article 3 of the Convention. Often it was a court that took the initial decision on an extradition request, and a negative decision would be binding on the government authority with the final say in the matter, whereas a decision in favour of extradition could be either accepted or overruled by that authority. He wanted to know how the system worked in Benin - in particular, who actually ruled on extradition. Did the State party have a special extradition law to which it turned in cases when it had no extradition treaty with a particular country?

11. The protection of suspects after they had been taken into custody, covered in article 11 of the Convention, was very important. He would welcome specific information on detainees' access to a lawyer, medical attention where necessary, and their family or friends. Was there a procedure whereby a detainee's family could appeal for an end to arbitrary detention?

12. With regard to article 12, the claim by Amnesty International, cited in paragraph 151 of the report, that the courts did not generally investigate complaints of torture and ill-treatment was further evidence of the wide gap between the existence of satisfactory legislation and its effective implementation. He wished to know how the Government intended to remedy that situation.

13. He stressed the need for special domestic legislation on the crime of torture that would allow complainants to have their cases heard, in accordance with article 13, and victims to claim redress, in accordance with article 14 of the Convention. He wished to know whether any complaints had been lodged in respect of acts of torture committed during the revolutionary period and whether it was possible to punish the crimes committed during that period which had given rise to all the after-effects of torture listed in paragraph 169 of the report. It was not clear to him whether the crimes were imprescriptible, if Benin was a party to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, or whether they were covered by the amnesty he had referred to earlier.

14. Lastly, he asked whether Benin would consider making the declaration under article 21 and in particular under article 22.

15. Mr. GONZÁLEZ POBLETE, alternate Country Rapporteur, said that the Committee welcomed Benin's initial country report and important step the country had taken in ratifying the Convention against Torture.

16. He had a number of questions which he hoped would clarify some of the statements in the report. In paragraph 21, he was struck by the wide variety of detention facilities, and he wondered what the places of detention covered by the phrase "and so forth" in the second indented subparagraph were and whether they were of a public nature. In the same paragraph, a large number of non-governmental organizations (NGOs) were listed as working with the Ministry of Justice. He asked why certain NGOs had not been authorized to conduct their activities and whether NGOs, especially those involved in defending human rights, could be set up freely.

17. He welcomed Benin's ratification of or accession to the long list of human rights instruments contained in paragraph 23 of the report and asked whether the Universal Declaration of Human Rights and the African Charter of Human and Peoples' Rights had been translated into the main languages of Benin's various ethnic groups.

18. He drew attention to an apparent contradiction between paragraph 28, according to which article 9 of Benin's Constitution qualified as punishable offences acts of torture or other cruel, inhuman or degrading treatment or punishment, and paragraphs 38 and 39, which stated that there was no specific legislation defining or providing for the crime of torture. Given that courts could punish only offences set out in the Criminal Code, he did not see how article 9 of the Constitution could be respected. Likewise, paragraph 29 of the report stated that the Constitutional Court was competent to hear cases involving torture, yet according to paragraph 43 it did not seem that that competence was exercised with any frequency, since the Court only "occasionally" received complaints of wrongful detention and of torture during detention.

19. He asked what steps torture victims had to take before they could bring their case before the Constitutional Court. He also wished to know how the Constitutional Court proceeded when a case alleging torture was referred to it and whether it had competence to impose a punishment on perpetrators of torture or whether its powers were restricted to hearing the case. Did the Court also have jurisdiction over civil matters? Could it order the perpetrator to pay compensation or could it impose an administrative penalty, such as ordering that the guilty party should be dismissed from public service?

20. Paragraph 33 listed the various remedies available to victims of torture. He asked what the difference was between a remedy afforded by the Constitutional Court and a judicial remedy. He wondered which was more advantageous for the victim of torture. He also wished to know what was meant by administrative remedy and, more generally, what powers the judiciary had to monitor procedures for rectifying violations of human rights and the role that was played in that regard by the Directorate of Human Rights of the Ministry of Justice. It appeared clear that, although it had not had any legislative impact, the inter-ministerial commission's definition of torture (para. 39) had set a good precedent.

21. He drew attention to the distinctions draw in the report between the police, who were civilian personnel (para. 91), and the gendarmerie, who were military personnel (para. 93), and asked for further information about the criminal investigation officers to whom reference was made in paragraph 100. According to paragraph 98, some soldiers had had responsibility for investigating offences of opinion or supposed crimes against State security, whereas in paragraph 122 it was stated that deprivation of liberty could be imposed by civil servants and soldiers holding the status of criminal investigation officers. Adding further to the confusion, paragraph 143 spoke of brigade commanders and all criminal investigation officers working for the gendarmerie. He would welcome an explanation of the different functions of the civilian police, the gendarmerie and the members of the armed forces working as judicial police.

22. Mr. RASMUSSEN enquired about the conditions of detention of persons deprived of liberty. According to paragraph 121, police custody did not exceed more than 48 hours as a rule, but could be extended 24 hours and even be as long as eight days. That was a long time to be in police custody. Paragraph 21 stated that efforts were made to ensure that the 48-hour limit on detention for investigation was observed. He asked how common it was to be held for more than 24 hours, how many persons were detained for eight days and what conditions in detention were like. He specifically sought information on the size of cells, the number of detainees per cell, whether they were fed or had to rely on their relatives, whether they could receive family visits and see a lawyer and a doctor and whether they could take exercise outside. Could a person be taken from prison and placed in police custody for interrogation, and if so, how long could he be held? Some of the descriptions of prison conditions in the report made for horrifying reading. In that connection he sought an explanation of the form of torture known as the "rodeo" (para. 167).

23. He was pleased that NGOs could work in prisons, but he wondered whether they could actually talk with inmates and monitor the situation, or whether they were just allowed to hand food over to prison guards. He also enquired how many juveniles were in prison, what the age of majority was and whether juveniles were held in the same cells as adults.

24. Paragraph 138 of the report suggested that inmates could be kept in solitary confinement for up to three months; he wished to know what the regulations for such punishment were and whether persons in solitary confinement could receive visits or parcels from their families, whether they were fed, how big their cells were and whether they contained a bed. Given the report's description of prison conditions, he wondered what the death rate in such facilities was.

25. He also wished to know whether prisons had enough medicine and whether a prison physician kept records of lesions found on inmates upon their arrival and during their detention. He asked the delegation to inform the Committee whether prison physicians received special training on the prohibition of torture, as required by article 10 of the Convention.

26. Ms. GAER said that the report's detail and candour more than compensated for its late submission. Paragraph 98 stated that military personnel accounted for the overwhelming majority of notorious torturers in Benin. She would be grateful for additional information on any measures taken to deal with those individuals: were they still serving in the army, and if so, were there any plans to retire them? What screening measures were in place, if any? It would be helpful to know whether some kind of national commission had been established to examine the cases of known torturers. Had any of them been punished?

27. Further information was required on the composition of the prison population, disaggregated, if possible, by ethnicity and gender. The State party should also indicate what proportion of training for law enforcement officers and judicial personnel was funded by official development assistance.

28. It would be interesting to learn what measures the Beninese Government had taken to deal with the problem of trafficking in children and to counter various traditional practices that were akin to torture and ill-treatment (such as vidomegon and female genital mutilation). Lastly, what were the authorities doing to tackle the problem of mob justice and vigilantism, and specifically the case of one Colonel Devi who had incited mobs to lynch suspected criminals in south-west Benin?

29. Mr. YU Mengjia asked what practical steps the State party had taken to reduce the number of repeat offenders and thus address the problem of overcrowding in prisons.

30. The CHAIRMAN asked the delegation to confirm that, in Beninese criminal law, the defence of superior orders did not apply to torture. The delegation should also indicate whether Benin asserted universal jurisdiction over some crimes, including torture. With reference to paragraph 50 of the report, he wondered whether the State party really meant to imply that any criminal who employed torture or barbaric acts when committing a crime would be considered guilty of murder and would therefore be punishable by death. Following that reasoning, a burglar who tortured a householder would incur the death penalty.

31. Mr. GNONLONFOUN (Benin) said that the Committee should judge the report as an initial effort that focused on a regrettable period of Beninese history. That chapter of national life was now closed. Outsiders who commented on frightening conditions in Benin betrayed a lack of familiarity with everyday life in West Africa. Specifically, appalling prison conditions should be viewed against a backdrop of generalized and endemic poverty.

32. The second point he wished to make was that the Beninese judicial system was modelled on that of France. Criminal investigation officers and gendarmes were therefore part of the judicial apparatus; they were not military personnel. In post-revolutionary Benin, soldiers were not authorized to assume judicial or quasi-judicial functions. The Constitution specifically stated that any State agent or individual would incur punishment for acts of torture, and that the defence of executing orders from a superior was not available in such cases. All citizens had the right to petition the Constitutional Court for a ruling on the constitutionality of acts of torture or ill-treatment, and the authorities were obliged to take action pursuant to the Court's ruling. Such petitions could be filed with or without the assistance of a lawyer, thus making the procedure as widely accessible as possible. It should be noted, however, that the Constitutional Court did not have the power to punish torturers. That power vested in the Supreme Court, and proceedings before that body necessitated the services of a lawyer.

33. The term vidomegon was used to describe children who had been sent away from home to live with other families. It was a traditional custom, formerly motivated by family and social solidarity, that had become commercialized. Children were treated as little more than merchandise, a potential source of income in money or in kind for their indigent parents. The Beninese Government was determined to stamp out the commercialization of the practice.

34. The delegation of Benin withdrew.

The meeting was suspended at 11.55 a.m. and resumed at 12.20 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

35. The CHAIRMAN reported to the Committee on the thirteenth meeting of chairpersons of the human rights treaty bodies, which had taken place in June 2001. The chairpersons had agreed that the agenda of their next meeting should include an item on follow-up to the recommendations made at the thirteenth meeting. They had also concluded that it was useful to continue to hold informal meetings with States parties during the meeting of chairpersons since such meetings gave the States parties an opportunity to express their views on the work of the Committees. For example, States parties had expressed the opinion that some elements of their reports to the six human rights treaty bodies were repeated in each report and might be addressed in a single report, submitted to all the treaty bodies. Some States parties, particularly those with limited resources, looked forward to any elimination of duplicate reporting that might reduce their workload. The chairpersons had agreed that a valid concern had been raised, and they would explore whether such a core document from each State party was acceptable.

36. Another important outcome of the meeting was the decision, adopted unanimously, that the chairpersons or their delegates should attend a meeting of the United Nations organs to which their reports were submitted for consideration, in order to provide an opportunity for that body to react to the Committee's reports.

37. It had also been agreed that an inter-Committee meeting should be held to coincide with the meeting of chairpersons. The chairperson and two members from each Committee would attend that meeting, which would consider possible improvements in the Committees' methods

of work. The chairpersons had concurred that the Committees' collaboration with the Sub-Commission on the Promotion and Protection of Human Rights should be strengthened. The chairpersons had also met with the special rapporteurs of the Commission on Human Rights.

38. The chairpersons had decided to send a further letter to the Secretary-General on the issue of equal payment of honorariums to members of all treaty bodies.

39. In reply to a question from Ms. Gaer as to the usefulness of the meetings of chairpersons, he said that he felt that they had proved to be valuable. For example, they had led to the development of the plans of action for strengthening the implementation of the treaties for which the High Commissioner's Office had responsibility. Those plans of action had improved the work of the Committee against Torture, particularly in the area of communications. And if the meetings succeeded in reaching agreement on some form of common reporting, they would have served a further useful purpose.

40. Mr. MAVROMMATIS said that the inter-Committee meetings would be useful only if they were well prepared and had a limited agenda.

41. Ms. GAER agreed with Mr. Mavrommatis that such meetings must be well prepared. She felt that the meetings of chairpersons provided an opportunity to address not only States parties' concerns relating to the functioning of the Committees, but also the concerns of the treaty bodies themselves. One result had been the creation of the Petitions Team that had made an important contribution to establishing consistency between the Committees while increasing the level of support available to them.

42. The CHAIRMAN noted that the plans of action had been a secretariat initiative aimed at addressing problems that had arisen in the Committees. Since it was important that such changes should reflect the actual concerns of Committee members, he encouraged members to voice their concerns so that they could be addressed.

The meeting rose at 12.45 p.m.